

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - -

AMGEN, INC.,	:	CIVIL NO. 16-853
et al.,	:	
Plaintiff	:	
	:	
	:	
	:	
	:	
	:	
v.	:	UNDER SEAL
	:	
	:	
	:	
	:	
AMNEAL PHARMACEUTICALS,	:	Philadelphia, Pennsylvania
et al.,	:	June 13, 2019
Defendant	:	2:06 p.m.

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TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE MITCHELL S. GOLDBERG
UNITED STATES DISTRICT JUDGE

- - -

APPEARANCES:

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1 (The following was heard in open court at
2 2:06 p.m.)

3 THE COURT: Hello.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Tentative response.

6 ALL: Good afternoon, Your Honor.

7 THE COURT: Have a seat. I have a lot of
8 papers I need to organize, so just bear with me for a
9 second.

10 (Pause in proceedings.)

11 THE COURT: Okay. This case, the
12 controversy here involves two parties in a larger
13 case, Amgen versus Amneal, but the parties here are
14 Plaintiff Amgen and Sun. Who is here on behalf of
15 Amgen?

16 MR. BLUMENFELD: Good afternoon, Your
17 Honor. Jack Blumenfeld from Morris Nichols, John
18 Murnane from the Venable Firm --

19 MR. MURNANE: Good afternoon, Your Honor.

20 MR. BLUMENFELD: -- Josh Rothman from the
21 Venable Firm.

22 MR. ROTHMAN: Good afternoon.

23 THE COURT: Nice to see you again. And
24 just because I'm so bad on names, the two of you are
25 going to argue, right? So spell your last names

1 again, please.

2 MR. MURNANE: Murnane, -U-R-N-A-N-E.

3 THE COURT: Great.

4 MR. ROTHMAN: Rothman, R-O-T-H-M-A-N.

5 THE COURT: Okay. Go ahead.

6 MR. BLUMENFELD: Behind me, Eric Agovino
7 from Amgen, A-G-O-V-I-N-O, James Tyminski from
8 Venable, T-Y-M-I-N-S-K-I.

9 THE COURT: Nice to see you.

10 MR. BLUMENFELD: I'm glad I can do that.

11 THE COURT: Yes.

12 MR. BLUMENFELD: And behind them, Lisa
13 Russo, who is from Venable and Lois Kwasigroch from
14 Amgen.

15 MS. KWASIGROCH: Good afternoon.

16 THE COURT: I remember you. How are you?

17 MR. BLUMENFELD: Thank you, Your Honor.

18 THE COURT: All right, thank you. And who
19 is here for Sun?

20 MR. GATTUSO: Good afternoon, Your Honor.

21 Dominic Gattuso from Heyman Enerio Gattuso --

22 THE COURT: Spell it.

23 MR. GATTUSO: I'm sorry, G-A-T-T-U-S-O.

24 THE COURT: -- S-O. Go ahead.

25 MR. GATTUSO: And I have with me Clay

1 Holloway --

2 THE COURT: Mr. Holloway.

3 MR. GATTUSO: -- from Kilpatrick Townsend.

4 THE COURT: Okay.

5 MR. GATTUSO: Thank you.

6 THE COURT: Okay. So first thing before I
7 forget is someone, I think you folks, want me to seal
8 the courtroom I think. I don't -- I know some of the
9 folks here. I don't know who those two people are,
10 and this is just a summer clerk and --

11 MR. HOLLOWAY: They're with Sun, Your
12 Honor.

13 THE COURT: -- this is the assigned law
14 clerk. So there's -- I don't think there's anyone in
15 the courtroom -- who are you, sir?

16 MR. AUTEN: Your Honor, my name is Steve
17 Auten.

18 THE COURT: And you're with?

19 MR. AUTEN: I'm not counsel for either Sun
20 or Amgen.

21 THE COURT: Okay. Sounds like you want to
22 be cryptic on who you're with or --

23 MR. AUTEN: Well, I don't represent nobody
24 active in the case, but I do represent Alkem
25 Laboratories in the settle -- with respect to the

1 settlement on the same product.

2 THE COURT: Settlement on the same product.

3 But you're not -- you're not with a party in the

4 case, you're just --

5 MR. AUTEN: That's correct, Your Honor.

6 THE COURT: All right. So we should

7 discuss -- I don't know how we do it with him in the

8 courtroom, but we should --

9 MR. HOLLOWAY: Well --

10 THE COURT: -- discuss whether we have to

11 seal the courtroom, right?

12 MR. HOLLOWAY: This is --

13 THE COURT: Do you want to press that

14 point?

15 MR. HOLLOWAY: I mean I -- my only -- my

16 only statement, Your Honor, is the parties entered

17 into a confidential settlement agreement. You can

18 tell from what we agreed to and redacted --

19 THE COURT: I just want to know do you want

20 to press the point? Do you want the courtroom

21 sealed?

22 MR. HOLLOWAY: That would be our request,

23 Your Honor, yes.

24 THE COURT: Okay. So I'm sure everyone

25 just read -- and I think it's Third Circuit case law

1 would apply on sealing issues in a patent case, but
2 maybe the Federal Circuit case law applies if someone
3 has a different view. But if it's Third Circuit,
4 there's a very recent Third Circuit case that just
5 came out that really spells out clearly
6 confidentiality and sealing. So to the extent that
7 you agree Third Circuit case law applies to the
8 sealing issue, do you?

9 MR. HOLLOWAY: We do, Your Honor.

10 THE COURT: Okay. So that's the Avandia
11 case and it's a very clear pronouncement, I think a
12 continuation of what Panzy (ph) said, which is the
13 presumption is public access, very strong
14 presumption, and statements like -- and I'm going to
15 give you a chance to expand, but statements like,
16 "Well, the parties entered into a confidentiality
17 agreement," are not sufficient. I mean you're -- if
18 you're moving, you're going to have to -- it's your
19 burden to prove harm if we keep the courtroom open.
20 So saying we entered into a confidentiality agreement
21 is not even close, in my judgment, to meeting that
22 burden. So I mean sort of -- it's going to be
23 difficult to discuss it while the public is still in
24 the room. Can you articulate the harm without
25 causing the harm?

1 MR. HOLLOWAY: Your Honor, we're actually
2 find just going forward.

3 THE COURT: Okay.

4 MR. HOLLOWAY: We can withdraw -- we can
5 withdraw the request or you can just rule against it
6 so we don't --

7 THE COURT: Well, I mean it's not an
8 either/or. I'm happy -- I'm happy to -- I'm not
9 broadcasting to you that I disagree with you. I'm
10 just saying we have a Third Circuit standard that I'm
11 going to have to comply with. I'm happy to talk it
12 through, figure out a way to talk it through, if you
13 want the courtroom sealed. So it's your decision.
14 What do you want to do?

15 MR. HOLLOWAY: The --

16 THE COURT: Do you want to press that point
17 or not?

18 MR. HOLLOWAY: The harm to us, Your Honor,
19 to Sun --

20 THE COURT: Do you want to press that point
21 or not?

22 MR. HOLLOWAY: I would just -- yes, I'm
23 going to make one position on this.

24 THE COURT: Okay.

25 MR. HOLLOWAY: We are competitors with the

1 gentleman who is here.

2 THE COURT: (Indiscernible).

3 MR. HOLLOWAY: And we don't know what their
4 settlement agreement looks like.

5 THE COURT: Okay.

6 MR. HOLLOWAY: We know what our settlement
7 agreement looks like and we know the implications to
8 Sun depending on how Your Honor rules on our motion
9 and the case that we've brought.

10 THE COURT: Yes.

11 MR. HOLLOWAY: There is a competitive
12 disadvantage to Sun in terms of us going to market
13 and what we want out of our motion to the extent that
14 others would try to read into what we're doing and
15 follow in similar suit. So --

16 THE COURT: And that's the harm that
17 you're -- you think meets your burden under the
18 Avandia case, is that correct?

19 MR. HOLLOWAY: That would be our only
20 argument other than the parties entered into a
21 confidentiality agreement, Your Honor.

22 THE COURT: Well, it's an argument with I
23 think the needed substance. So you've made that
24 argument, so yes, you're pressing your request to
25 seal the courtroom or not?

1 MR. HOLLOWAY: Yes, Your Honor.

2 THE COURT: Yes. Okay. Does anyone else
3 want to be heard, including -- I'll hear what you
4 have to say.

5 MR. AUTEN: Yes, Your Honor, Mr. Auten, A-
6 U-T-E-N. I don't think there's any confidentiality
7 concerns here whatsoever because of the agreements in
8 this case, of which my client has its own. All the
9 terms are substantially similar, so to the extent
10 that --

11 THE COURT: Well, how do you know? Do you
12 have the agreement in this case?

13 MR. AUTEN: No, I've been involved in these
14 cases long enough that the brand controls the
15 drafting of the settlement agreement, and most of the
16 agreements, they file that template and they're all
17 going to contain substantially the same language.

18 THE COURT: Well, you don't know what this
19 says.

20 MR. AUTEN: I --

21 THE COURT: You don't know what the --
22 we're here to discuss --

23 MR. AUTEN: I obviously do not know --

24 THE COURT: -- a settlement agreement, and
25 you don't know what the settlement agreement says.

1 MR. AUTEN: No, of course I don't know
2 that.

3 THE COURT: Yes. Okay.

4 MR. AUTEN: I have not seen the agreement
5 per se.

6 THE COURT: Okay.

7 MR. AUTEN: The best I -- the best I know
8 it -- I can offer is that the brand offers the
9 template up in negotiations and carries it through
10 (indiscernible) with each defendant. And we've also
11 seen from the Teva case that's been published mostly
12 in the record already with the dispute involving
13 Teva.

14 THE COURT: Okay. Okay. I'm inclined to
15 seal the courtroom because I think that under
16 Avandia, Sun makes out their burden to establish harm
17 in that they've articulated that the outcome of my
18 ruling here could allow competitors to know when they
19 may launch, and that could cause them harm, which I
20 believe is enough under the Avandia case. But if
21 you -- if you disagree -- I mean if you disagree and
22 you want to press the point, then we got to talk
23 about well, you know, maybe we have to litigate the
24 sealing, you know, because there's a -- there's a
25 party of interest from the public who wants to stay

1 in the courtroom. And I'm reticent to kick anyone
2 out of a public courtroom.

3 MR. AUTEN: Your Honor, I do want to press
4 the point. We already have notice that they have an
5 intent to launch the product. They just have an
6 agreement -- they have a disagreement with Amgen in
7 terms of the meaning of that agreement on whether
8 they can do that. It's very clear in their papers
9 that Sun believes it has a right to launch this
10 product. And, in fact, under the terms of their
11 agreement, we were provided notice that Sun gave to
12 Amgen of its intent to launch the product. So --

13 THE COURT: Yes, so -- but you're not a
14 party in this case?

15 MR. AUTEN: We were at one point. My
16 client has settled -- has the same -- has the
17 settlement agreement --

18 THE COURT: Were you --

19 MR. AUTEN: -- with Amgen.

20 THE COURT: Who is your client again?

21 MR. AUTEN: Alkem, A-L-K-E-M, Alkem
22 Laboratories.

23 THE COURT: And Alkem was -- remembering
24 this was Judge Sleet's case originally, so my memory
25 is not so great as to who originally came into this

1 case. I walked into it in the middle of a trial or
2 right before a trial. So Alkem was an original
3 defendant when the case was filed, is that right? Is
4 that right?

5 MR. MURNANE: Yes, Your Honor.

6 THE COURT: You're the plaintiff. They
7 were?

8 MR. MURNANE: Yes.

9 THE COURT: Okay. Okay. So would it --
10 and what's your last name again, sir?

11 MR. AUTEN: It's A-U-T-E-N.

12 THE COURT: A-U-T --

13 MR. AUTEN: Echo, November.

14 THE COURT: A-U-T --

15 MR. AUTEN: E-N.

16 THE COURT: E-M, as in Mitch?

17 MR. AUTEN: No, Echo and November.

18 THE COURT: Echo, November. Okay. Do you
19 think your rights to access would be preserved if I
20 were to say I do think they've made out their burden
21 under Avandia, but I'll provisionally seal the
22 transcript here and, of course, entertain your motion
23 to have me unseal it so you would have access? Would
24 that be satisfactory to you?

25 MR. AUTEN: Well, I'd certainly would like

1 to attend today's hearing. That's my objective
2 today.

3 THE COURT: Attend what?

4 MR. AUTEN: The hearing today. I'd like --

5 THE COURT: Yes.

6 MR. AUTEN: In person.

7 THE COURT: Okay.

8 MR. AUTEN: I don't -- I took by your
9 statement that you were going to seal the courtroom
10 and then provisionally allow me access to the
11 transcript.

12 THE COURT: Yes, but I would add -- yes,
13 provisionally allow you access if you could convince
14 me that my ruling was in error and I provide you with
15 an opportunity to do that. So seal the courtroom,
16 transcript is under seal, you can file a motion with
17 me, tell me that I'm wrong and it shouldn't have been
18 sealed, and if I agree with you -- this way you get
19 your due process -- and if I agree with you, I'll
20 unseal and I'll hear from Sun in a more detailed
21 fashion. I'm just trying to be practical because
22 everyone is here and I want to go forward with the
23 hearing, and --

24 MR. AUTEN: Right.

25 THE COURT: -- I think -- I think that that

1 preserves -- I'm asking you do you believe that that
2 preserves your client's rights to seek access to
3 what's going to go on here?

4 MR. AUTEN: Yes.

5 THE COURT: You're good with that? Okay.
6 Then the courtroom is sealed. I'm going to
7 respectfully ask you to leave. And why don't -- you
8 know, file whenever -- I'm going to file the
9 transcript under seal, and file whatever motion you
10 want to file. Whenever you file it, we'll get their
11 response, and if you're right and my initial ruling
12 is wrong, then you'll get access to the transcript,
13 okay?

14 MR. AUTEN: Thank you, Your Honor.

15 THE COURT: All right, thank you.

16 (Pause in proceedings.)

17 THE COURT: Mr. Sonnie asked if I wanted
18 him to lock the courtroom. Chain it, padlock it.
19 Thank you. Okay, I think we're good. All right, so
20 that takes care of that issue.

21 I think there are two issues here, but I
22 want to -- and they both come under the provisions of
23 the settlement agreement. But I have some
24 preliminary questions I want to get answered. Very
25 preliminary, and I couldn't find it -- I probably

1 missed it three times -- when does the 504 patent
2 expire? I'm sorry, 405. It's 405, right?

3 (Pause in proceedings.)

4 THE COURT: See, now I don't feel so bad.
5 Everyone is scrambling to find the answer.

6 MR. MURNANE: It's the fall of 2026, Your
7 Honor.

8 THE COURT: Fall of 2026, okay. All right.
9 Well, this is Sun's motion, right?

10 MR. HOLLOWAY: Yes, Your Honor.

11 THE COURT: So I have a bunch of questions.
12 Why don't you just step to the podium and make your
13 argument? And counsel who have appeared before me
14 before know I'll most likely interrupt you when
15 questions pop into my head, and apologies in advance
16 for those interruptions.

17 MR. HOLLOWAY: And, Your Honor, I have just
18 paper copies that are excerpts to various provisions.

19 THE COURT: Yes.

20 MR. HOLLOWAY: It might be easier than
21 flipping constantly.

22 THE COURT: Yes, thank you.

23 (Pause in proceedings.)

24 MR. HOLLOWAY: So I'm going to just start
25 on what is slide 2 of the second page. So there are

1 [REDACTED]
2 [REDACTED]. The agreement at issue
3 has [REDACTED]. When
4 Sun and Amgen reached an agreement [REDACTED]
5 [REDACTED], [REDACTED]
6 [REDACTED]
7 [REDACTED] There was also a provision [REDACTED]
8 [REDACTED]
9 [REDACTED]t.

10 So the three scenarios here [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 THE COURT: The agreement what?

19 MR. HOLLOWAY: The agreement [REDACTED]
20 [REDACTED]

21 THE COURT: But the [REDACTED] --

22 MR. HOLLOWAY: [REDACTED]

23 THE COURT: [REDACTED]

24 [REDACTED]

25 MR. HOLLOWAY: [REDACTED]

1 [REDACTED] that
2 is correct.

3 THE COURT: Okay. [REDACTED]

4 [REDACTED]

5 MR. HOLLOWAY: They're --

6 THE COURT: The product is out there.

7 MR. HOLLOWAY: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 THE COURT: Right.

13 MR. HOLLOWAY: Amgen and Piramal agreed [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] Yet at the same time, Amgen says Teva --

19 or says Sun [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 The third scenario is [REDACTED]

24 [REDACTED]

25 [REDACTED], and

1 that's one of the major bases for the discovery we
2 asked for, which is an ancillary part of today's
3 hearing.

4 So going to the next slide --

5 THE COURT: Wouldn't it -- wouldn't it --
6 in your view, wouldn't it make more sense if I do
7 decide to interpret the contract -- and I understand
8 there's a case or controversy issue out there. But
9 if I do decide to interpret the contract, why
10 wouldn't it make more sense to do that and then
11 decide whether to allow discovery, as opposed to
12 simultaneous?

13 MR. HOLLOWAY: So if I understand Your
14 Honor's question, would it -- would it make more
15 sense to decide whether Sun's theory has merit before
16 we get to discovery?

17 THE COURT: Yes.

18 MR. HOLLOWAY: Okay. That's my
19 understanding of what we're doing today at the
20 hearing.

21 THE COURT: Okay.

22 MR. HOLLOWAY: So if you decide there's no
23 merit, then that conversation might be shorter. If
24 you decide there is merit, the conversation might be
25 even shorter.

1 THE COURT: Okay.

2 MR. HOLLOWAY: So turning to the next
3 slide, this is -- you mentioned the case or
4 controversy issue, Your Honor. This is where we know
5 there is one. Amgen and Teva agreed that Teva
6 wouldn't sell the product anymore. They also entered
7 into an agreement with Teva [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED].

15 We confirmed this when we called them
16 shortly before filing the instant motion and said [REDACTED]
17 [REDACTED]
18 There is plenty of federal circuit law out there that
19 says that [REDACTED]
20 [REDACTED].

21 THE COURT: What's your best case for that
22 proposition?

23 MR. HOLLOWAY: That would be the Sandis
24 case, Your Honor. We cite it in our briefs at 480
25 F.3d 1372. And so -- and the fact that this Court

1 has jurisdiction is undisputed. Its order in this
2 case specifically gave this Court retention and
3 jurisdiction over the enforcement of the agreement.
4 Amgen cites a case in its brief called the Henderson
5 case.

6 THE COURT: Well, let me -- before we get
7 to that --

8 MR. HOLLOWAY: Uh-huh.

9 THE COURT: -- what am I enforcing? The
10 terms of the order that I guess Judge Sleet -- yes,
11 Judge Sleet signed says, "The Court retains
12 jurisdiction over plaintiffs and defendants for
13 purposes of enforcing the terms." So tell me
14 precisely what I would be enforcing if I agree with
15 your position.

16 MR. HOLLOWAY: [REDACTED]
17 [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED] That's what
20 we're enforcing.

21 THE COURT: And why is it -- so I'm

22 [REDACTED]

23 MR. HOLLOWAY: Absolutely. You're

24 [REDACTED]. And --

25 THE COURT: And why would -- why would --

1 just to sort of understand your thinking, why
2 wouldn't a more proper way for me to do this would
3 be -- [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 MR. HOLLOWAY: So that's a rightness
11 question as opposed to a jurisdictional question.
12 The justiciability doctrine of rightness is a
13 balancing test. And as we cited in our brief, the
14 Energy Partners case, when the interest in postponing
15 review, which is what Amgen would suggest until the
16 question arises in a more concrete fashion in final
17 form, is outweighed by the immediate and practical
18 impact on the party seeking relief. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] It's the same

24 dispute. Your Honor is going to have to deal with

25 the same issue. This is the more judicially

1 economical way to handle it. Let's do it now and
2 that way we don't have to -- [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 THE COURT: And it's -- any time you say
7 judicial economy, a judge always, you know, listens,
8 but I could -- I could argue back with you and say
9 well, people come to -- people have problems that
10 aren't in a courtroom all the time. Judges can't
11 just, you know, step in and resolve them --

12 MR. HOLLOWAY: So that's why --

13 THE COURT: [REDACTED]
14 [REDACTED] right?

15 MR. HOLLOWAY: Well, fair enough, but
16 that's why there's a difference between the idea that
17 this Court and Your Honor has jurisdiction to deal
18 with the issue --

19 THE COURT: Yes, you've already -- you're
20 already in a lawsuit. You just settled it.

21 MR. HOLLOWAY: And then the question is
22 whether or not the issue is currently ripe. And I
23 would suggest that the conversation Your Honor and I
24 are having is a ripeness question.

25 THE COURT: Yes.

1 MR. HOLLOWAY: And that is squarely within
2 your discretion. Do I feel like I can better handle
3 the dispute now or [REDACTED]

4 [REDACTED] And I would proffer that we can
5 better handle it now [REDACTED]
6 [REDACTED].

7 THE COURT: Would you mind arguing from
8 counsel table because I think I want to go back and
9 forth and ask --

10 MR. HOLLOWAY: Yeah, that's fine, Your
11 Honor.

12 THE COURT: -- Mr. Murnane a question, and
13 I'll come back to you. But they've already -- I mean
14 we're in a lawsuit. You settled with them. And you
15 asked Judge Sleet to sign, and he did sign, a
16 provision that says, "The Court retains jurisdiction
17 for purposes of enforcing the terms of the settlement
18 agreement." [REDACTED]

19 [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED]

22 MR. MURNANE: The Court does retain
23 jurisdiction, Your Honor, for a case or controversy,
24 and he --

25 THE COURT: Well, it doesn't say that.

1 MR. MURNANE: Well, I'm --

2 THE COURT: It says "for purposes of
3 enforcing the terms of the settlement agreement."

4 MR. MURNANE: Yeah, and if we were truly
5 enforcing the terms of the settlement, there would be
6 a case or controversy, but we're not. That's our
7 position, Your Honor.

8 THE COURT: Why not?

9 MR. MURNANE: Because, if I may, Judge
10 Stark has already ruled on some of these issues in
11 the Sipla (ph) case and --

12 THE COURT: Is that the antitrust case?

13 MR. MURNANE: Well, that and -- it's
14 antitrust and it's also the agreement, the Sipla
15 agreement, between Amgen and Sipla, okay?

16 THE COURT: Do I need the -- I saw that
17 opinion and I read some of it. And do I need to
18 understand that opinion --

19 MR. MURNANE: No, no, I'm --

20 THE COURT: -- to rule in this case?

21 MR. MURNANE: No, Your Honor, we'll talk
22 about that.

23 THE COURT: Okay.

24 MR. MURNANE: But we -- I mention it
25 because counsel told us two days ago that they intend

1 to bring aspects of that case before Your Honor, so
2 I'm bringing it up. But as he noted there on page 8
3 of his May 2nd opinion there, for -- if this is a
4 breach of contract, if they're saying it is a breach
5 of contract here, the law he cites, the VLIW Tech
6 case here for Delaware law, so you have an existence
7 of a contract, number one. We have that. Then for
8 two, the breach of an obligation imposed by the
9 contract. We haven't breached any obligation imposed
10 by the contract. And three, resulting damage to the
11 plaintiff.

12 So there are three elements, and the second
13 one, there is no obligation that we breached. The
14 contract terms are clear. We didn't breach any
15 obligation, Your Honor.

16 THE COURT: [REDACTED]
17 [REDACTED] [REDACTED]
18 [REDACTED]

19 [REDACTED] [REDACTED]

20 THE COURT: Right?

21 MR. HOLLOWAY: -- [REDACTED]
22 [REDACTED]

23 THE COURT: You're threatening him with a
24 breach.

25 MR. MURNANE: Your Honor, they haven't said

1 to us -- although we heard what Mr. Auten said, [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] We have not heard that. We have

5 not heard [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 THE COURT: Why -- pronounce your last name
8 for me.

9 MR. HOLLOWAY: Holloway.

10 THE COURT: Why then did Mr. Holloway

11 [REDACTED]

12 MR. MURNANE: He --

13 THE COURT: -- [REDACTED]

14 [REDACTED]

15 MR. MURNANE: He articulated and noted [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 THE COURT: Yes.

22 MR. MURNANE: [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 THE COURT: Understood. Are you ready to
2 launch?

3 MR. HOLLOWAY: [REDACTED]
4 [REDACTED], Your Honor.

5 THE COURT: [REDACTED]
6 [REDACTED]

7 MR. HOLLOWAY: One second, Your Honor.

8 THE COURT: Sure, yes.

9 (Pause in proceedings.)

10 MR. HOLLOWAY: [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]

15 MR. HOLLOWAY: [REDACTED]
16 [REDACTED]

17 THE COURT: [REDACTED] [REDACTED]
18 [REDACTED]

19 MR. HOLLOWAY: [REDACTED]

20 THE COURT: I think someone behind you
21 wants to talk to you.

22 (Pause in proceedings.)

23 MR. HOLLOWAY: Okay. [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 THE COURT: This is so entertaining. I
2 keep saying -- I keep saying [REDACTED]
3 and you keep coming back with a different way to say
4 it.

5 MR. HOLLOWAY: Yeah, I would say -- the way
6 I would put it, Your Honor, [REDACTED]

7 [REDACTED] --

8 THE COURT: [REDACTED], right?

9 MR. HOLLOWAY: [REDACTED].

10 THE COURT: Okay. I guess I'm missing why
11 we're -- why you're dancing around the question a
12 little bit.

13 MR. HOLLOWAY: Well, the fact of the matter
14 is [REDACTED]
15 [REDACTED].

16 THE COURT: Right.

17 MR. HOLLOWAY: [REDACTED]
18 [REDACTED]

19 THE COURT: Of course.

20 MR. HOLLOWAY: [REDACTED]

21 THE COURT: Of course. Of course. Okay.
22 Okay. And the case you were citing from was the
23 Sipla case that Judge Stark just authored where you
24 said -- your point was, Mr. Murnane, it was there has
25 to be some breach, and there has been no breach.

1 MR. MURNANE: Correct, Your Honor. As
2 we've just heard -- we're just hearing now details
3 about this, we --

4 THE COURT: Right.

5 MR. MURNANE: -- couldn't have [REDACTED]
6 [REDACTED]

7 THE COURT: Right.

8 MR. MURNANE: [REDACTED]

9 THE COURT: Okay. And do -- could you --
10 just for our benefit when we go back and look at
11 this, could you give us a cite to the Judge Stark
12 recent case in Sipla so we can find it quick?

13 MR. MURNANE: He cited VLIW Tech, LLC
14 versus Hewlett-Packard Co., 840 Atlantic 2d 606 612
15 Delaware 2003.

16 THE COURT: It's a case Judge Stark relied
17 on?

18 MR. MURNANE: Yes.

19 THE COURT: Not the -- not the case he
20 authored?

21 MR. MURNANE: Correct, Your Honor.

22 THE COURT: Got it.

23 MR. MURNANE: He relied on it for those
24 three principles that I articulated.

25 THE COURT: Understood. Okay. All right,

1 continue.

2 MR. HOLLOWAY: Okay. So going now to the
3 substance of [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] When I began, Your Honor, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED].

15 So Sun's position is [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 We cited in our brief the various Delaware
21 cases about reading a contract as a whole, reasonable
22 interpretation being the touchstone in Delaware law,
23 and not reading contract terms to be superfluous. So
24 just [REDACTED]

25 [REDACTED]

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[REDACTED]

So I'll turn now to slide 5. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: I'm sorry, one second. I want to -- I want to ask Mr. Murnane a question. I thought [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. HOLLOWAY: Yes, Your Honor.

THE COURT: Is that your point?

MR. HOLLOWAY: Amgen's response brief at page 13 says, [REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Yes. That's not a [REDACTED]

1 [REDACTED] So let's ask Mr. Murnane
2 what his view is on that.

3 MR. MURNANE: Your Honor, the point that
4 counsel made [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 THE COURT: All right. And what's your
10 support for that, for --

11 MR. MURNANE: [REDACTED]

12 THE COURT: -- what you just said?

13 MR. MURNANE: [REDACTED]

14 THE COURT: What part?

15 MR. MURNANE: Okay. Okay. Your Honor, if
16 I -- if I -- would it be helpful if we gave you our
17 slides, Your Honor, so you could look at them while
18 we're --

19 THE COURT: Whatever you --

20 MR. MURNANE: Okay.

21 THE COURT: -- want to give me to --

22 MR. MURNANE: Thank you.

23 THE COURT: I just --

24 MR. MURNANE: And would Your Honor -- would
25 Your Honor need another copy of the agreement?

1 THE COURT: No, I have --

2 MR. MURNANE: Okay.

3 THE COURT: -- a copy.

4 MR. MURNANE: Okay.

5 THE COURT: For the last point, which
6 (indiscernible), I just wanted to know what your
7 support was in the agreement.

8 MR. MURNANE: Okay.

9 THE COURT: Where is it?

10 MR. MURNANE: And I think if you have the
11 slides, Your Honor --

12 THE COURT: I do.

13 MR. MURNANE: -- it will be very easy.

14 THE COURT: Go ahead.

15 MR. MURNANE: Okay. So if we take a look
16 at our slide number 3, Your Honor --

17 THE COURT: Okay, I'm there.

18 MR. MURNANE: [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 THE COURT: Yes.

22 MR. MURNANE: [REDACTED]

23 [REDACTED]

24 THE COURT: Yes.

25 MR. MURNANE: That's not in controversy

1 here. [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 THE COURT: Okay.
11 MR. MURNANE: Okay? [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 THE COURT: Got it.
17 MR. MURNANE: [REDACTED]
18 [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] If we go to the next
7 slide, slide 6 --

8 THE COURT: Can you hold that thought for a
9 second?

10 MR. MURNANE: Yes.

11 THE COURT: Because I want to confirm
12 something you just said which I'm not --

13 MR. MURNANE: Uh-huh.

14 THE COURT: Is it generally accepted, what
15 you just said, [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED] [REDACTED]

20 MR. MURNANE: And -- yes, Your Honor, and
21 it's --

22 THE COURT: Okay.

23 MR. MURNANE: -- [REDACTED]

24 [REDACTED] There's no --

25 THE COURT: All right, go ahead.

1 MR. MURNANE: -- dispute about that. Okay.

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 THE COURT: Yes.

12 MR. MURNANE: [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 THE COURT: Okay.

18 MR. MURNANE: So now we get to slide 7. [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]. Key point here.

4 THE COURT: Let him -- you've said a lot.

5 MR. MURNANE: Okay.

6 THE COURT: Let him respond to that,
7 please.

8 MR. HOLLOWAY: So the -- [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED] and my
2 slide that summarizes this, Your Honor, is slide 7,
3 okay? [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED]

11 Counsel was quoting from our brief [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]

17 THE COURT: When you [REDACTED]

18 [REDACTED]

19 MR. HOLLOWAY: [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 [REDACTED] [REDACTED]

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[REDACTED]

THE COURT: I'm -- you're ahead of me a little bit.

MR. HOLLOWAY: Sorry.

THE COURT: So [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. HOLLOWAY: [REDACTED]

[REDACTED]

THE COURT: -- because it's on appeal?

MR. HOLLOWAY: Yes.

THE COURT: Did I get that right?

MR. HOLLOWAY: Yes, Amgen sought appeal. Teva had not prevailed --

THE COURT: Right.

MR. HOLLOWAY: -- at the Federal Circuit on that yet.

THE COURT: So because it's on appeal, even though they won in the district court, [REDACTED]

[REDACTED] [REDACTED]?

MR. HOLLOWAY: I -- the way I would word it, Your Honor, is [REDACTED]

[REDACTED]

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[REDACTED]

THE COURT: Okay.

MR. HOLLOWAY: Does that make sense?

THE COURT: Yes. Show me where it says
that.

MR. HOLLOWAY: [REDACTED]

[REDACTED]

(Pause in proceedings.)

MR. HOLLOWAY: [REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Yes, I have the agreement.

MR. HOLLOWAY: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Got it. Okay.

MR. HOLLOWAY: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
THE COURT: I lost you there. [REDACTED]
MR. HOLLOWAY: So Teva and Amgen, [REDACTED]
[REDACTED]
THE COURT: Right, right.
MR. HOLLOWAY: -- [REDACTED] --
THE COURT: Right.
MR. HOLLOWAY: -- [REDACTED]
[REDACTED]
THE COURT: Oh, [REDACTED]
[REDACTED]
[REDACTED]
MR. HOLLOWAY: They've agreed [REDACTED]
THE COURT: Right.
MR. HOLLOWAY: -- They're agreed [REDACTED]
[REDACTED]
that's correct.
THE COURT: Okay.
MR. HOLLOWAY: So going back to the
[REDACTED]
[REDACTED]

1 THE COURT: Yes.

2 MR. HOLLOWAY: What you have is [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 THE COURT: Can I interrupt you? I want to
20 ask Mr. --

21 MR. HOLLOWAY: Please.

22 THE COURT: -- Murnane a question. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 MR. MURNANE: If I may, Your Honor? I
15 invite attention to --

16 THE COURT: Did my question make sense? Do
17 you understand that?

18 MR. MURNANE: It did, but --

19 THE COURT: Okay.

20 MR. MURNANE: -- we need to look at [REDACTED]
21 [REDACTED]

22 THE COURT: Of course.

23 MR. MURNANE: Okay?

24 THE COURT: Of course.

25 MR. MURNANE: And so I think the simplest

1 thing to do would be, if we could, look at slide 16
2 in Amgen's deck of slides.

3 THE COURT: Okay. Go ahead, I'm there.

4 MR. MURNANE: Okay. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED]

10 THE COURT: It will help me follow you if I
11 just read it again, so just bear with me.

12 MR. MURNANE: Okay.

13 THE COURT: I want to read it again and --

14 MR. MURNANE: Okay.

15 THE COURT: -- better understand what
16 you're going to say.

17 MR. MURNANE: Thank you, Your Honor.

18 THE COURT: Just bear with me.

19 (Pause in proceedings.)

20 THE COURT: Go ahead.

21 MR. MURNANE: Okay. And that continues on
22 to slide 17. But the key language for us now here,
23 Your Honor, is --

24 THE COURT: Yes.

25 MR. MURNANE: -- [REDACTED]

1 [REDACTED] [REDACTED]

2 [REDACTED]

3 THE COURT: Yes.

4 MR. MURNANE: -- we've pointed out before.

5 THE COURT: Yes.

6 MR. MURNANE: [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 THE COURT: And that's what you did.

17 MR. MURNANE: [REDACTED] [REDACTED]

18 [REDACTED]

19 THE COURT: Yes.

20 MR. MURNANE: [REDACTED]

21 [REDACTED]

22 THE COURT: But --

23 MR. MURNANE: [REDACTED]

24 [REDACTED]

25 THE COURT: Got it. But as I understand

1 it, [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 MR. MURNANE: If I may, Your Honor?

16 THE COURT: The Teva generic is out there
17 in --

18 MR. MURNANE: Okay.

19 THE COURT: -- [REDACTED] right?

20 MR. MURNANE: If we could, Your Honor,
21 let's look at my slides 18 and then 19.

22 (Pause in proceedings.)

23 THE COURT: Go ahead.

24 MR. MURNANE: The very things Your Honor
25 just said, counsel's predecessor counsel said in

1 2017. And as Mr. Auten said before he left, you
2 know, the brand usually writes the first draft, so we
3 have the first draft. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] The next slide shows --

17 THE COURT: But does that -- does that --
18 maybe I missed it, but does that address my question,

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 MR. MURNANE: They said it was and they
3 said to avoid that harm --

4 THE COURT: Yes.

5 MR. MURNANE: -- [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 THE COURT: Yes, how is that possible?

9 MR. MURNANE: [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 THE COURT: Now, is this -- is this comment
17 box the back and forth between prior counsel for Sun
18 and you --

19 MR. MURNANE: Yes.

20 THE COURT: -- in drafting the --

21 MR. MURNANE: Yes.

22 THE COURT: -- [REDACTED]

23 MR. MURNANE: Yes, Your Honor. Addressing
24 the very concern -- the very concern -- and you'll
25 see in the box --

1 THE COURT: It feels like a parol evidence
2 rule, but maybe not.

3 MR. MURNANE: Right.

4 THE COURT: But go ahead.

5 MR. MURNANE: Well, and on that point, if
6 I may, Your Honor --

7 THE COURT: Well, finish your point --

8 MR. MURNANE: Okay. All right.

9 THE COURT: -- because we're already
10 talking about it.

11 MR. MURNANE: Okay.

12 THE COURT: So go ahead.

13 MR. MURNANE: So here, predecessor counsel
14 says, [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] exactly what Your
19 Honor was talking about.

20 THE COURT: Yes.

21 MR. MURNANE: That's what they -- that's
22 what [REDACTED] [REDACTED].

23 The next slide 20 --

24 THE COURT: Yes, but their counsel

25 expressed [REDACTED] It's

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[REDACTED]

MR. MURNANE: Well --

THE COURT: -- [REDACTED]

[REDACTED]

MR. MURNANE: Yeah, but he's saying is the same point. [REDACTED]

[REDACTED]

THE COURT: Right. So how does that advance your point? I'm not following.

MR. MURNANE: My point is, Your Honor, that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] No one else has interpreted this agreement -- and Judge Stark, if I may, Your Honor, on pages --

THE COURT: I missed that point. [REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 MR. HOLLOWAY: [REDACTED]

4 THE COURT: Okay.

5 MR. HOLLOWAY: [REDACTED]e.

6 THE COURT: [REDACTED]

7 MR. MURNANE: And if I may, Your Honor?

8 Judge Stark's opinion on Sipla, pages 6 and 27 to 28,
9 said Sipla is not licensed, okay? And he looked at
10 this for a fair -- to a fare-thee-well over the
11 months of January, February, March, April, May, okay?
12 He said they're not licensed, okay? [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] And do you know what that means, Your
19 Honor? [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 MR. HOLLOWAY: If I may, Your Honor? I
2 want to start with that last point. [REDACTED]

3 [REDACTED] [REDACTED]
4 [REDACTED]

5 THE COURT: Is the Judge Stark --

6 MR. HOLLOWAY: Amgen breached the --

7 THE COURT: -- case an antitrust case?

8 MR. HOLLOWAY: Say it again.

9 THE COURT: Is the Judge Stark cause-of-
10 action case that we're talking about, isn't it an
11 antitrust case?

12 MR. HOLLOWAY: I'll let counsel for Amgen
13 try --

14 THE COURT: Is --

15 MR. HOLLOWAY: -- to describe that.

16 MR. MURNANE: That was -- that was
17 initially brought as an antitrust case and patent
18 misuse case, and --

19 THE COURT: Right.

20 MR. MURNANE: -- Judge Stark ultimately
21 ruled based on [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 THE COURT: With --

2 MR. MURNANE: It was --

3 THE COURT: Settlement agreement with?

4 MR. MURNANE: Amgen.

5 THE COURT: And?

6 MR. MURNANE: Sipla.

7 THE COURT: Similar to this?

8 MR. MURNANE: Yes.

9 THE COURT: Verbatim like this?

10 MR. MURNANE: [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 THE COURT: [REDACTED]

13 MR. MURNANE: [REDACTED]

14 THE COURT: So you're encouraging me to
15 read carefully -- I've scanned -- read carefully
16 Judge Stark's opinion because it interprets -- excuse
17 me -- [REDACTED]

18 MR. MURNANE: [REDACTED]

19 [REDACTED]

20 THE COURT: Okay.

21 MR. MURNANE: With respect to the [REDACTED]

22 [REDACTED] Your Honor.

23 THE COURT: Yes, okay. All right, go
24 ahead.

25 MR. HOLLOWAY: The -- I would agree with

1 Your Honor [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 To the parol evidence point, Your Honor --

22 THE COURT: [REDACTED]

23 [REDACTED]

24 MR. HOLLOWAY: Yes, Your Honor.

25 THE COURT: Go ahead.

1 MR. HOLLOWAY: [REDACTED]

2 [REDACTED]

3 THE COURT: Go ahead.

4 MR. HOLLOWAY: -- be specific.

5 THE COURT: Yes. Yes.

6 MR. HOLLOWAY: To the parol evidence point
7 that we've walked through, Sun didn't bring up the
8 parol evidence in this case. Amgen did on response.
9 The reason we addressed it in our reply is because
10 they mischaracterized it, just as counsel just did.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Counsel for Amgen says [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 THE COURT: [REDACTED]
17 [REDACTED]
18 MR. HOLLOWAY: [REDACTED]
19 THE COURT: How?
20 MR. HOLLOWAY: [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 THE COURT: It sounds more complicated than

1 just that phone call.

2 MR. HOLLOWAY: [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 THE COURT: Is the discovery you want

16 [REDACTED]

17 [REDACTED]

18 MR. HOLLOWAY: So --

19 THE COURT: Is that what you want?

20 MR. HOLLOWAY: It -- when we filed this,

21 Your Honor -- yes, when we filed this, Your Honor, we

22 had two theories. Our first theory is [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] We also know that because in the
4 injunction -- agreed-to injunction with Piramal, [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 The other aspect of discovery that we
12 originally requested and served on Amgen [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 THE COURT: What does that have to do with
18 my interpretation of the [REDACTED]

19 MR. HOLLOWAY: [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 THE COURT: [REDACTED]

23 [REDACTED] I thought
24 you -- it's pretty simple.

25 MR. HOLLOWAY: Sure.

1 THE COURT: [REDACTED]

2 [REDACTED] I thought that was your -- that was
3 your position.

4 MR. HOLLOWAY: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] I

9 don't know what their conversations were.

10 THE COURT: Right.

11 MR. HOLLOWAY: [REDACTED]

12 [REDACTED]

13 [REDACTED] Our position in our briefing has
14 always been that is one thing, but we don't have the
15 discovery on that to make that allegation. We think
16 we've pled enough to get the discovery into that.
17 What Your Honor could rule on today --

18 THE COURT: I'm sorry to interrupt you.

19 MR. HOLLOWAY: Uh-huh.

20 THE COURT: What -- in this business, what
21 would -- [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. HOLLOWAY: It could --

25 THE COURT: -- that says --

1 MR. HOLLOWAY: It could even [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 THE COURT: Yes.

5 MR. HOLLOWAY: [REDACTED]

6 [REDACTED]

7 THE COURT: Yes.

8 MR. HOLLOWAY: [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 The second part, Your Honor, that you could

24 rule on today based on the summary that we just

25 walked through of what we've gleaned from both the

1 Sipla order --

2 THE COURT: I'm not ruling on anything
3 today.

4 MR. HOLLOWAY: I'm just saying --

5 THE COURT: You didn't mean that literally,
6 but --

7 MR. HOLLOWAY: Not needing discovery.

8 THE COURT: Right.

9 MR. HOLLOWAY: That's what I was meaning.

10 THE COURT: Right. Okay.

11 MR. HOLLOWAY: Without needing further
12 discovery, [REDACTED]

13 [REDACTED]

14 THE COURT: Right.

15 MR. HOLLOWAY: And just to -- just to
16 continue [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] at my slide 11, I kind of break this down.

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED], [REDACTED]
9 [REDACTED] -- that was the
10 language that counsel emphasized, that [REDACTED]
11 [REDACTED]d we'll talk about that -- [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] That's the language that
14 came about [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 So you have these two options [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 Counsel emphasizes that when it says [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] That would not be a permissible

1 read under the agreement. It would make the terms

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 What happened here with Teva and Piramal is
18 that Amgen entered into agreements that blessed the
19 downstream sales, allowed them to keep going on.

20 They've done nothing as it pertains to the
21 distributors. The injunction that they got
22 specifically says it doesn't impact them. So --

23 THE COURT: Do you know who Teva sold to
24 when you say [REDACTED]

25 MR. HOLLOWAY: We said in our brief, Your

1 Honor, at page -- at page 3, we said [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 THE COURT: What's that?

5 MR. HOLLOWAY: - [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 THE COURT: Right.

9 MR. HOLLOWAY: [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] -

13 THE COURT: Right.

14 MR. HOLLOWAY: -- [REDACTED] --

15 THE COURT: Do you --

16 MR. HOLLOWAY: -- [REDACTED]

17 THE COURT: Do you have any sense without

18 having discovery of how much was sold [REDACTED]

19 [REDACTED]

20 MR. HOLLOWAY: [REDACTED]

21 [REDACTED]

22 THE COURT: Yes.

23 MR. HOLLOWAY: That's why we said [REDACTED]

24 [REDACTED] It was kind of --

25 THE COURT: Do you --

1 MR. HOLLOWAY: -- an information and
2 belief.

3 THE COURT: Do you have a guestimate as to
4 how much was sold (indiscernible)?

5 MR. HOLLOWAY: It's actually described in
6 pretty good detail in Judge Stark's Sipla order. It
7 was estimated -- Teva estimated they were going to
8 sell upwards of \$212 million worth of product. As --
9 Judge Stark notes at page 4 of the Sipla order that
10 Teva launched by shipping 409,128 bottles to
11 wholesalers. So --

12 THE COURT: On the five quietest business
13 days of the calendar year. I wonder if that -- I'm
14 just curious --

15 MR. HOLLOWAY: Yeah.

16 THE COURT: -- whether that has anything to
17 do with anything or it's just coincidence.

18 MR. HOLLOWAY: Well, that's part of the
19 allegation we made, Your Honor, is that even --

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 That's why it seems like there's -- you know, where
2 there's smoke there might be fire, and that's why we
3 made those allegations.

4 THE COURT: Okay. I'm sure there's a lot,
5 Mr. Murnane, so we'll give --

6 MR. MURNANE: Yeah.

7 THE COURT: -- Mr. Murnane the I think -- I
8 think the last word. But let's see what he has to
9 say. Maybe I'll let you respond. Go ahead, whatever
10 you want to say in response to what counsel said.

11 MR. MURNANE: Thank you, Your Honor.

12 THE COURT: Sure.

13 MR. MURNANE: With respect to Your Honor's
14 comment on the time of year when this happened, the
15 facts are the FDA approved Teva's ANDA on December
16 27th, 2018.

17 THE COURT: That's -- that was an aside
18 comment --

19 MR. MURNANE: Teva --

20 THE COURT: -- I probably should have just
21 kept to myself.

22 MR. MURNANE: Well, just to let Your Honor
23 know --

24 THE COURT: Yes.

25 MR. MURNANE: Well, Your Honor made a side

1 comment. Opposing counsel made more than a side
2 comment, okay? So Teva --

3 THE COURT: I don't see how it's going to
4 factor into my decision.

5 MR. MURNANE: Teva launched the next day
6 and there was the settlement. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Again, if we look at the slide 16 where

1 it's referring to [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 THE COURT: I mentioned that to Sun's
16 counsel, I thought it was -- you know, picking up the
17 phone and making a phone call seemed impractical,
18 but, you know -

19 MR. MURNANE: So, Your Honor, it would.
20 That's why we have these deals, okay? [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED] The product was sold between

1 December 28th and January 2nd, and [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED] And it's really that, Your Honor.
16 If we could go back to some of the slides
17 that we were talking about previously, and we
18 stopped. Oh, if I may? Just one point, Your Honor.
19 The notion of being -- [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED]

5 THE COURT: Could you -- could you bear
6 with me one second? I want to --

7 MR. MURNANE: Sure.

8 THE COURT: [REDACTED]

9 [REDACTED]

10 MR. MURNANE: Uh-huh.

11 THE COURT: Just give me one second.

12 (Pause in proceedings.)

13 THE COURT: Go ahead.

14 MR. MURNANE: Okay. If I -- if I may
15 invite attention back to -- I'm just responding to
16 comments that counsel made, Your Honor --

17 THE COURT: Yes.

18 MR. MURNANE: -- back to slide -- our slide
19 16 -- 16 and 17. Counsel focused on [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]. Again, the language is very

18 clear.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

1 [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED] That's what's critical here.
9 If we look at the next slide, slide 10, our
10 slide 10, Your Honor, there we've correctly noted
11 that [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED] [REDACTED]

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[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
THE COURT: So what did -- to general --
sort of step back from all these details questions,
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
MR. MURNANE: Right.
THE COURT: [REDACTED]
MR. MURNANE: [REDACTED]
[REDACTED]
[REDACTED]
THE COURT: In [REDACTED] --
MR. MURNANE: [REDACTED]
THE COURT: -- right?
MR. MURNANE: I think [REDACTED]
THE COURT: [REDACTED]
[REDACTED]. That's --
MR. MURNANE: That's what they've bargained
for, Your Honor.
THE COURT: That's a long time, right?
MR. MURNANE: Well, that's what they --

1 that's what they bargained for.

2 THE COURT: Okay.

3 MR. MURNANE: Or --

4 THE COURT: Or --

5 MR. MURNANE: -- if [REDACTED] --

6 THE COURT: Right.

7 MR. MURNANE: -- under [REDACTED] --

8 THE COURT: Okay.

9 MR. MURNANE: -- [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 THE COURT: Right.

13 MR. MURNANE: [REDACTED].

14 THE COURT: Which is what this discussion
15 has been about, so --

16 MR. MURNANE: Exactly.

17 THE COURT: -- I'm still sort of wondering
18 why this was a -- maybe this is something I shouldn't
19 be thinking about, but I'm sort of wondering [REDACTED]

20 [REDACTED]

21 MR. MURNANE: What --

22 THE COURT: They -- you're -- if I accept
23 what you're saying, [REDACTED]

24 [REDACTED]

25 MR. MURNANE: Or --

1 THE COURT: -- [REDACTED]

2 MR. MURNANE: [REDACTED]

3 [REDACTED]

4 THE COURT: Okay.

5 MR. MURNANE: -- [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 THE COURT: I understand that argument.

13 MR. MURNANE: [REDACTED]

14 [REDACTED]

15 THE COURT: Understood. I want to ask Mr.

16 Holloway, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MR. HOLLOWAY: We didn't bring it up, we

20 just responded to it. [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 THE COURT: You can't have it both ways.

1 MR. HOLLOWAY: But --

2 THE COURT: You can't say don't consider

3 [REDACTED]

4 [REDACTED]

5 MR. HOLLOWAY: Yeah, I don't -- [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 THE COURT: Okay.

10 MR. HOLLOWAY: [REDACTED]

11 [REDACTED]

12 THE COURT: Understood.

13 MR. HOLLOWAY: -- of it, Your Honor.

14 THE COURT: Okay. Excuse me one second.

15 (Pause in proceedings.)

16 THE COURT: Okay. Good discussion. I'll
17 let both counsel summarize if you think it's
18 necessary. I think we really covered a lot of
19 ground, but if there's another point that you believe
20 hasn't been made because we've had a -- sort of a Q
21 and A, I'll listen to any further points you want to
22 make.

23 I have one final question. [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

MR. HOLLOWAY: [REDACTED]

6

[REDACTED] [REDACTED]

7

[REDACTED]

8

THE COURT: [REDACTED]

9

MR. HOLLOWAY: [REDACTED]

10

[REDACTED]

11

THE COURT: [REDACTED] [REDACTED]

12

MR. HOLLOWAY: [REDACTED] [REDACTED]

13

[REDACTED]

14

[REDACTED]

15

THE COURT: Yes.

16

MR. HOLLOWAY: [REDACTED]

17

[REDACTED]

18

[REDACTED]

19

THE COURT: Got it. Okay. [REDACTED]

20

[REDACTED]

21

MR. MURNANE: [REDACTED]

22

[REDACTED]

23

THE COURT: So --

24

MR. MURNANE: [REDACTED]

25

Your Honor.

1 THE COURT: Yes.

2 MR. MURNANE: [REDACTED]

3 THE COURT: Yes.

4 MR. MURNANE: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 THE COURT: [REDACTED]

11 [REDACTED]

12 MR. MURNANE: [REDACTED]

13 [REDACTED]

14 THE COURT: Okay.

15 MR. MURNANE: [REDACTED]

16 [REDACTED]

17 THE COURT: Okay. Mr. Holloway, any final
18 points you think you haven't made that you want to
19 make?

20 MR. HOLLOWAY: I made it just then, Your
21 Honor. [REDACTED]

22 THE COURT: All of the above, everything
23 we've been talking about.

24 MR. HOLLOWAY: Yeah, that's it.

25 THE COURT: Okay. You're good? Okay. Mr.

1 Murnane, anything else you want to -- you want to
2 say?

3 MR. MURNANE: If I may just address [REDACTED]

4 [REDACTED]

5 THE COURT: Sure.

6 MR. MURNANE: -- point that --

7 THE COURT: Go ahead.

8 MR. MURNANE: -- counsel made?

9 THE COURT: Yes.

10 MR. MURNANE: Your Honor, [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] if

20 there's -- if Your Honor believes [REDACTED]

21 [REDACTED] In this case, [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

THE COURT: Okay. All right, thank you to both counsel. Would you submit a proposed sealing draft order?

MR. HOLLOWAY: Yes, Your Honor.

THE COURT: I think I've articulated the reasons and we'll see -- we'll see how that goes. Okay. Thank you, everybody. Good afternoon.

MR. MURNANE: Thank you, Your Honor, and good afternoon.

(Proceedings adjourned, 3:30 p.m.)

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CERTIFICATION

I, Michael Keating, do hereby certify that
the foregoing is a true and correct transcript from the
electronic sound recordings of the proceedings in the
above-captioned matter.

Date



Michael Keating